

NOV 16 1984

ALEXANDER L. STEVENS,
STATES CLERKIN THE SUPREME COURT OF THE UNITED STATES
October Term, 1983MONTANA, et al.,
Petitioners,

v.

BLACKFEET TRIBE OF INDIANS,
Respondent.ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JUNE 29, 1984
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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

NOTE: "Tribe" refers to the Blackfeet Tribe of Indians.

"State" refers to the State of Montana and the Director of the Montana Department of Revenue.

"Glacier" refers to Glacier County, Montana.

"Pondera" refers to Pondera County, Montana.

<u>Docket Number</u>	<u>Date</u>	<u>Description of Docket Entry</u>
1	10/27/78	Tribe's Complaint
12	1/24/79	Tribe's First Amended Complaint

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<u>Docket Number</u>	<u>Date</u>	<u>Description of Docket Entry</u>
18	2/9/79	Glacier's Motion to Dismiss and for Order Requiring Plaintiff to Pay Glacier Costs and Attorney's fees
19	2/23/79	Pondera's Motion to Dismiss and for an Order Requiring Plaintiff to Pay Pondera's Costs and Attorney's Fees
20	2/23/79	Montana's Answer to First Amended Complaint
23	3/9/79	Pondera's Answer to First Amended Complaint

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<u>Docket Number</u>	<u>Date</u>	<u>Description of Docket Entry</u>
27	4/16/79	Order Denying all Motions to Dismiss and Motions of Glacier and Pondera for an Award of Costs and Attorney's Fees
33	9/21/79	Glacier's Answer to First Amended Complaint
52	2/20/80	Tribe's Motion for Partial Summary Judgment and Supporting Brief
64	5/6/80	Montana's Motion for Summary Judgment

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<u>Docket Number</u>	<u>Date</u>	<u>Description of Docket Entry</u>
65	5/6/80	Montana's Brief in Support of Motion for Summary Judgment and in Opposition to Tribe's Motion for Summary Judgment
66	5/15/80	Pondera's Motion for Summary Judgment
67	5/15/80	Pondera's Brief in Support of Motion for Summary Judgment and in Opposition to Tribe's Motion for Summary Judgment

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<u>Docket Number</u>	<u>Date</u>	<u>Description of Docket Entry</u>
70	7/18/80	Tribe's Reply Brief on Tribe's Motion for Partial Summary Judgment and Reply Brief to Defendants' Motion for Summary Judgment
73	8/15/80	State's Reply Brief in Support of Motion for Summary Judgment
74	8/18/80	Pondera's Reply Brief in Support of Motion for Summary Judgment
75	1/6/81	Court's Memorandum Opinion
76	1/6/81	Order granting Defendants' Motion for Summary Judgment

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<u>Docket Number</u>	<u>Date</u>	<u>Description of Docket Entry</u>
77	1/6/81	Filed and entered Summary Judgment in favor of Defendants and against Tribe
78	1/16/81	Tribe's Notice of Appeal

PROCEEDINGS IN NINTH CIRCUIT COURT OF APPEALS

<u>Date</u>	<u>Description of Docket Entry</u>
2/3/82	Case argued and submitted
12/14/82	Opinion affirming District Court
12/14/82	Filed and entered Judgment
12/27/82	Tribe's Petition for Rehearing with Suggestion for Rehearing En Banc
12/30/82	State's Motion to Modify Opinion

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<u>Date</u>	<u>Description of Docket Entry</u>
1/10/83	Tribe's Opposition to State's Motion to Modify Opinion
6/22/83	Order that case be reheard by an <u>en banc</u> panel of the Court and withdrawing the previous 3-judge panel assignment
10/28/83	Motion of States of New Mexico and Arizona for Leave to File Their Joint Amicus Brief Out of Time
11/2/83	Tribe's Opposition to Motion for Leave to File Amicus Brief
11/10/83	Order granting states of New Mexico and Arizona leave to file their late Amicus Brief

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<u>Date</u>	<u>Description of Docket Entry</u>
11/16/83	Case argued and submitted before <u>en banc</u> panel
4/3/84	Opinion affirming in part and reversing in part and remanding to District Court for further proceedings
4/3/84	Filed and entered Judgment

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FIRST AMENDED COMPLAINT OF

BLACKFEET TRIBE OF INDIANS

This document appears as Appendix D, page 131 of the Appendix to the Petition for Certiorari. It is not reprinted here.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

No. CV-78-61-GF

THE BLACKFEET TRIBE OF INDIANS,)
Plaintiff,)
vs.)
STATE OF MONTANA, et al.,)
Defendants.)

DEFENDANTS STATE OF MONTANA AND
DIRECTOR OF THE MONTANA DEPARTMENT
OF REVENUE'S ANSWER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT

Defendants State of Montana and

Director of the Montana Department of Revenue answer the Plaintiff's First Amended Complaint (hereinafter "Complaint") as follows:

FIRST DEFENSE

1. The allegations contained in paragraph 1 are conclusions of law and require no answer.

2. Admit the allegations contained in paragraph 2.

3. Deny that William A. Groff is Director of Revenue of the State of Montana, and allege that Laury M. Lewis is the Acting Director of the Department of Revenue for the State of Montana. Defendants admit the remaining allegations contained in paragraph 3.

4. Admit the allegations contained in paragraphs 4, 5, and 6.

5. Admit the existence of 25 U.S.C. §398, and allege that the

statute speaks for itself; deny any allegations contained in paragraph 7 inconsistent with 25 U.S.C. §398.

6. Admit the existence of 25 U.S.C. §397, and allege that the statute speaks for itself; deny any allegations contained in paragraph 8 inconsistent with 25 U.S.C. §397.

7. Admit the allegations of paragraph 9 quoting 25 U.C.S. (sic) §396(a).

8. Admit the existence of R.C.M. 1947, §84-2202, and allege that the statute speaks for itself; deny any allegations contained in paragraph 10 inconsistent with R.C.M. 1947, §84-2202.

9. Admit the existence of R.C.M. 1947, §84-2202, and allege that the statute speaks for itself; deny all allegations contained in paragraph 11

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inconsistent with R.C.M. 1947,
§84-2202.

10. Admit the existence of Chapter 62 of Title 84, R.C.M. 1947, and allege that the statutes speak for themselves; deny all allegations contained in paragraph 12 inconsistent with that Chapter.

11. Admit the existence of Chapter 70 of Title 84, R.C.M. 1947, and allege that the statutes speak for themselves; deny all allegations contained in paragraph 13 inconsistent with that Chapter.

12. Admit the existence of R.C.M. 1947, §60-145, and allege that the statute speaks for itself; deny any allegations contained in paragraph 14 inconsistent with that statute.

13. Admit the existence of the Treaty with the Blackfeet of October

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17, 1855, and allege that the Treaty speaks for itself; deny any allegations contained in paragraph 15 inconsistent with that Treaty.

14. Admit the existence of the Agreement of May 1, 1888 (25 Stat. 113); deny any allegations contained in paragraph 16 inconsistent with that Agreement.

15. Admit the existence of the Agreement of September 26, 1896, (29 Stat. 350); deny any allegations contained in paragraph 17 inconsistent with that Agreement.

16. Admit the existence of the Treaty with the Blackfeet of October 17, 1855, the Organic Act for the Territory of Montana, the Enabling Act of 1889, the 1889 Montana Constitution, and the 1972 Montana Constitution, and allege that those documents speak for

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themselves; deny all allegations contained in paragraph 18 inconsistent with those documents.

17. Deny that the 1938 Indian Mineral Leasing Act (25 U.S.C. §396) replaced and supplanted the 1891 Indian Mineral Leasing Act (25 U.S.C. §397); admit that the 1924 Act (25 U.S.C. §398) granted states the right to tax the royalty interest of Indian tribes in mineral leases of land owned by the United States Government and held in trust for the Indian tribes; deny that the 1924 Act applied only to leases granted under the 1891 Act (25 U.S.C. §397); deny the allegations that no congressional consent had been given to Defendants to tax royalty from leases granted under the 1939 Act.

18. Admit the existence of the opinion of the Solicitor of the United

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States Department of Interior dated November 7, 1977; deny the validity of the conclusions reached by that opinion, and allege that the opinion is inconsistent with prior opinions of the Solicitor of the United States Department of Interior.

19. Deny the allegations of paragraph 21.

20. Admit the legal title to part of Plaintiff's royalty interest is in the federal government, but allege that Defendants lack knowledge as to whether or not all of Plaintiff's royalty interest is so held. Defendants deny all other allegations contained in paragraph 22.

21. Defendants deny the allegations contained in paragraphs 23 through 27.

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SECOND DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

Plaintiff has failed to name as a party to this action the United States of America which holds legal title to the royalty interest alleged to have been taxed by the State of Montana, the Bureau of Indian Affairs and the United States Geological Survey which administer Plaintiff's royalty.

FOURTH DEFENSE

Plaintiff has failed to name as parties to this action the producers of oil and gas in which Plaintiff has a royalty interest. Plaintiff seeks refund of taxes which were paid by said producers who filed returns and paid taxes to the State of Montana without

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claiming that Plaintiff's royalty was exempt or immune from such taxes.

WHEREFORE Defendants State of Montana and Director of the Montana Department of Revenue pray:

1. That Defendants be granted judgment in their favor.
2. That Plaintiff take nothing by its complaint.
3. That Defendants be awarded their costs herein.
4. That Defendants be granted such further relief as the court may deem just and equitable.

DATED this 23d day of February, 1979.

Respectfully submitted,

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Attorneys for Defendants
State of Montana and
Montana Department of
Revenue

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA,
GREAT FALLS DIVISION

No. CV-78-61-GF

THE BLACKFEET TRIBE OF INDIANS)
Blackfeet Indian Reservation)
Browning, Montana 59417)
Plaintiff,)
vs.)
WILLIAM A. GROFF)
Director, Montana Department of)
Revenue; Capitol Building,)
Helena, Montana 59601)
STATE OF MONTANA)
Governor's Office)
Capitol Building)
Helena, Montana 59601)
GLACIER COUNTY, MONTANA)
Court House)
Cut Bank, Montana 59427)
PONDERA COUNTY, MONTANA)
Court House)
Conrad, Montana 59425)
Defendants.)

ANSWER OF DEFENDANT,
PONDERA COUNTY, MONTANA

COMES NOW the defendant, PONDERA COUNTY, MONTANA, and for its answer to plaintiff's First Amended Complaint on file herein, admits and denies as follows:

FIRST DEFENSE

1. The allegations contained in paragraph 1 are conclusions of law and require no answer.

2. Admits the allegations contained in paragraph 2.

3. Denies that William A. Groff is Director of Revenue of the State of Montana, and alleges that Laury M. Lewis is the Acting Director of the Department of Revenue of the State of Montana. Defendant admits the remaining allegations contained in paragraph 3.

4. Denies the allegations

contained in paragraph 4.

5. Denies the allegations contained in paragraph 5.

6. Denies the allegations contained in paragraph 6.

7. Admits the existence of 25 U.S.C. §398, and alleges that the statute speaks for itself; denies any allegations contained in paragraph 7 inconsistent with 25 U.S.C. §398.

8. Admits the existence of 25 U.S.C. §397, and alleges that the statute speaks for itself; denies any allegations contained in paragraph 8 inconsistent with 25 U.S.C. §397.

9. Admits the allegation of paragraph 9 quoting 25 U.S.C. §396(a).

10. Admits the existence of R.C.M. 1947, §84-2202, and alleges that the statute speaks for itself; denies any allegations contained in paragraph 10

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inconsistent with R.C.M. 1947,
§84-2202.

11. Admits the existence of R.C.M. 1947, §84-2202, and alleges that the statute speaks for itself; denies all allegations contained in paragraph 11 inconsistent with R.C.M. 1947, §84-2202.

12. Admits the existence of Chapter 62 of Title 84, R.C.M. 1947, and alleges that the statutes speak for themselves; denies all allegations contained in paragraph 12 inconsistent with that Chapter.

13. Admits the existence of Chapter 70 of Title 84, R.C.M. 1947, and alleges that the statutes speak for themselves; denies all allegations contained in paragraph 13 inconsistent with that Chapter.

14. Admits the existence of R.C.M.

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1947, §60-145, and alleges that the statute speaks for itself; denies any allegation contained in paragraph 14 inconsistent with that statute.

15. Admits the existence of the Treaty with the Blackfeet of October 17, 1885, and alleges that the Treaty speaks for itself; denies any allegations contained in paragraph 15 inconsistent with that Treaty.

16. Admits the existence of the Agreement of May 1, 1888 (25 Stat. 113); denies any allegations contained in paragraph 16 inconsistent with that Agreement.

17. Admits the existence of the Agreement of September 26, 1896 (29 Stat. 350); denies any allegations contained in paragraph 17 inconsistent with that Agreement.

18. Admits the existence of the

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Treaty with the Blackfeet of October 17, 1855, the Organic Act for the Territory of Montana, the Enabling Act of 1889, the 1889 Montana Constitution, and the 1972 Montana Constitution, and alleges that those documents speak for themselves; denies all allegations contained in paragraph 18 inconsistent with those documents.

19. Denies that the 1938 Indian Mineral Leasing Act (25 U.S.C. §396) replaced and supplanted the 1891 Indian Mineral Leasing Act (25 U.S.C. §397); admits that the 1924 Act (25 U.S.C. §398) granted states the right to tax the royalty interest of Indian tribes in mineral leases of land owned by the United States Government and held in trust for the Indian tribes; denies that the 1924 Act applied only to leases granted under the 1891 Act (25

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U.S.C. §397); denies the allegations that no congressional consent had been given to defendant to tax royalty from leases granted under the 1938 Act.

20. Admits the existence of the opinion of the Solicitor of the United States Department of Interior dated November 7, 1977; denies the validity of the conclusions reached by that opinion, and alleges that the opinion is inconsistent with prior opinions of the Solicitor of the United States Department of Interior.

21. Denies the allegations of paragraph 21.

22. Admits that legal title to part of plaintiff's royalty interest is in the federal government, but alleges that defendant lacks knowledge as to whether or not all of plaintiff's royalty interest is so held. Defendant

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denies all other allegations contained in paragraph 22.

23-27. Defendant denies the allegations contained in paragraphs 23 through 27.

SECOND DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

Plaintiff has failed to name as a party to this action the United States of America which holds legal title to the royalty interest alleged to have been taxed by the State of Montana, the Bureau of Indian Affairs and the United States Geological Survey which administer plaintiff's royalty.

FOURTH DEFENSE

Plaintiff has failed to name as parties to this action the producers of

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oil and gas in which plaintiff has a royalty interest. Plaintiff seeks refund of taxes which were paid by said producers who filed returns and paid taxes to the State of Montana without claiming that plaintiff's royalty was exempt or immune from such taxes.

WHEREFORE, defendant Pondera County, Montana, prays:

1. That defendant be granted judgment in its favor.
2. That plaintiff take nothing by its Complaint.
3. That defendant be awarded its costs herein.
4. That defendant be granted such further relief as the Court may deem just and equitable.

Dated this 7th day of March, 1979.

/s/ Douglas Anderson
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 Attorney for Defendant,
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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MONTANA
 GREAT FALLS DIVISION

No. CV-78-61-GF

THE BLACKFEET TRIBE OF INDIANS,)
)
 Plaintiffs,)
)
 -vs-)
)
 STATE OF MONTANA, et al.,)
)
 Defendants.)

DEFENDANT GLACIER COUNTY'S ANSWER
 TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant Glacier County answers
 the Plaintiff's First Amended Complaint
 (hereinafter "Complaint") as follows:

FIRST DEFENSE

1. The allegations contained in

paragraph 1 are conclusions of law and
 require no answer.

2. Denies the allegations
 contained in paragraph 2.

3. Denies that William A. Groff
 is Director of Revenue of the State of
 Montana, and alleges that Laury M.
 Lewis is the Acting Director of the
 Department of Revenue for the State of
 Montana. Defendant admits the
 remaining allegations contained in
 paragraph 3.

4. Admits the allegations
 contained in paragraphs 4, 5, and 6.

5. Admits the existence of 25
 U.S.C. §398, and alleges that the
 statute speaks for itself; denies
 allegations contained in paragraph 7
 inconsistent with 25 U.S.C. §398.

6. Admits the existence of 25
 U.S.C. §397, and alleges that the

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statute speaks for itself; denies any allegations contained in paragraph 8 inconsistent with 25 U.S.C. §397.

7. Admits the allegation of paragraph 9 quoting 25 U.S.C. §396(a).

8. Admits the existence of R.C.M. 1947, §84-2202, and alleges that the statute speaks for itself; denies any allegations contained in paragraph 10 inconsistent with R.C.M. 1947, §84-2202.

9. Admits the existence of R.C.M. 1947, §84-2202, and alleges that the statute speaks for itself; denies all allegations contained in paragraph 11 inconsistent with R.C.M. 1947, §84-2202.

10. Admits the existence of Chapter 62 of title 84, R.C.M. 1947, and alleges that the statutes speak for themselves; denies all allegations

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contained in paragraph 12 inconsistent with that Chapter.

11. Admits the existence of Chapter 70 of title 84, R.C.M. 1947, and alleges that the statutes speak for themselves; denies all allegations contained in paragraph 13 inconsistent with that Chapter.

12. Admits the existence of R.C.M. 1947, §60-145, and alleges that the statute speaks for itself; denies any allegations contained in paragraph 14 inconsistent with that statute.

13. Admits the existence of the Treaty with the Blackfeet of October 17, 1855, and alleges that the Treaty speaks for itself; denies any allegations contained in paragraph 15 inconsistent with that Treaty.

14. Admits the existence of the Agreement of May 1, 1888 (25 Stat.

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113); denies any allegations contained in paragraph 16 inconsistent with that Agreement.

15. Admits the existence of the Agreement of September 26, 1896 (29 Stat. 350); denies any allegations contained in paragraph 17 inconsistent with that Agreement.

16. Admits the existence of the Treaty with the Blackfeet of October 17, 1855, the Organic act for the Territory of Montana, the Enabling Act of 1889, the 1889 Montana Constitution, and the 1972 Montana Constitution, and alleges that those documents speak for themselves; denies all allegations contained in paragraph 18 inconsistent with those documents.

17. Denies that the 1938 Indian Mineral Leasing Act (25 U.S.C. §396) replaced and supplanted the 1891 Indian

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Mineral Leasing Act (25 U.S.C. §397); admits that the 1924 Act (25 U.S.C. §398) granted states the right to tax the royalty interest of Indian tribes in mineral leases of land owned by the United States government and held in trust for the Indian tribes; denies that the 1924 Act applied only to leases granted under the 1891 Act (25 U.S.C. §397); denies the allegations that no congressional consent had been given to Defendants to tax royalty from leases granted under the 1938 Act. Alleges that the United States of America, through the Secretary of the Interior and the other executives, officers, and employees of the United States Department of the Interior for a long period of time, beginning contemporaneously with the enactment of the 1938 Indian Mineral Leasing Act (25

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U.S.C. §396) and continuing until November 7, 1977, has by a long, continuous, and uniform practical construction and interpretation in the course of official action, and by uniform administrative practice, interpreted and regarded the 1891 Indian Mineral Leasing Act (25 U.S.C. §397) and the 1924 Act (25 U.S.C. §398) as being in full force and effect and as not having been repealed by the 1938 Indian Mineral Leasing Act (25 U.S.C. §396).

18. Admits the existence of a purported opinion of the Solicitor of the United States Department of Interior dated November 7, 1977; denies the validity of the conclusions reached by that opinion, and alleges that the opinion is inconsistent with prior opinions of the Solicitor of the United

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States Department of Interior. Alleges that the United States of America, through the Secretary of the Interior and the other executives, officers, and employees of the United States Department of the Interior for a long period of time, beginning contemporaneously (sic) with the enactment of the 1938 Indian Mineral Leasing Act (25 U.S.C. §396) and continuing until November 7, 1977, has by a long, continuous and uniform practical construction and uniform interpretation in the course of official action, and by uniform administrative practice, interpreted and regarded the 1891 Indian Mineral Leasing Act (25 U.S.C. §397) and the 1924 Act (25 U.S.C. §398) as being in full force and effect and as not having been repealed by the 1938 Indian

Mineral Leasing Act (25 U.S.C. §396).

19. Denies the allegations of paragraph 21.

20. Admits that legal title to part of Plaintiff's royalty interest is in the federal government, but alleges that Defendant lacks knowledge as to whether or not all of Plaintiff's royalty interest is so held. Defendant denies all other allegations contained in paragraph 22.

21. Defendant denies the allegations contained in paragraphs 23 through 27.

SECOND DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

The United States of America has not been joined in this action and is a

party who must be joined in this action under Rule 19 in that the United States of America holds legal title to the lands, and the oil, gas and minerals in the lands, owned by it for the benefit of the Plaintiff and in the absence of the United States of America complete relief cannot be accorded among those already parties to this action, and the United States of America claims an interest relating to the subject of this action and is so situated that the disposition of the action in the absence of the United States of America may leave the Defendants who are already parties to this action subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations resulting from subsequent court actions by the United States of America involving the

question presented by this action.

FOURTH DEFENSE

Plaintiff has failed to name as parties to this action the producers of oil and gas in which Plaintiff has a royalty interest and who paid the taxes on Plaintiff's royalty from production as alleged in paragraph 23 of Plaintiff's First Amended Complaint, if, in fact, any such taxes were paid. Plaintiff seeks refund of such taxes which were paid by said producers who filed returns and paid such taxes without claiming the Plaintiff's royalty was exempt or immune from such taxes, or without indicating that, in fact, such taxes were levied upon or collected from Plaintiff's royalty.

FIFTH DEFENSE

That the Plaintiff has been guilty of laches and unreasonable delay in

bringing this action.

That if, in fact, the Defendant Glacier County levied and collected taxes on Plaintiff's royalty from production as alleged in paragraph 23 of Plaintiff's First Amended Complaint, such was done over a period of more than forty (40) years with the full knowledge, acquiescence and consent of the Plaintiff. That by the delay in bringing this action for such a period of time, and by acquiescing in and consenting to the levying and collection of such taxes, if any, the Plaintiff (a) allowed the Defendant Glacier County to include proceeds from such taxes as a part of its budgeted revenue and to budget such proceeds for county governmental purposes benefiting the Plaintiff and the tribal members of the Plaintiff; and, (b) allowed the

Defendant to expend the proceeds from the collection of such taxes for the benefit of the Plaintiff and its members in furnishing governmental services, educational facilities, and education to the Plaintiff and members of the Plaintiff tribe, all of which was to the prejudice of this Defendant and resulted in the unjust or wrongful enrichment of the Plaintiff and its tribal members.

WHEREFORE, Defendant Glacier County prays:

1. That Defendant be granted judgment in its favor.
2. That Plaintiff take nothing by its complaint.
3. That Defendant be awarded its costs herein.
4. That Defendant be granted such further relief as the court may deem

just and equitable.

DATED this 20th day of September, 1979.

Respectfully submitted,
FRISBEE, MOORE & STUFFT

By: /s/ Selden S. Frisbee
Selden S. Frisbee
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Attorneys for Defendant
Glacier County

MEMORANDUM OPINION, Blackfeet Tribe of Indians v. Montana, 507 F. Supp. 446 (D. Mont. 1981).

This document appears as Appendix C, page 103 of the Appendix to the Petition for Certiorari. It is not reprinted here.

OPINION, Blackfeet Tribe of Indians v.
Groff, (unpublished) (9th Cir. 1982).

This document appears as Appendix B, page 70 of the Appendix to the Petition for Certiorari. It is not reprinted here.

OPINION, Blackfeet Tribe of Indians v.
Montana, 729 F.2d 1192 (9th Cir. 1984),
on rehearing en banc.

This document appears as Appendix A, page 1 of the Appendix to the Petition for Certiorari. It is not reprinted here.
